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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 305 (JMF)

5 NATHANIEL CHASTAIN,

6 Defendant.

Conference

7 -----x
8 New York, N.Y.
9 June 15, 2022
3:00 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: NICOLAS T. ROOS
THOMAS S. BURNETT
17 Assistant United States Attorneys

18 GREENBERG TRAURIG, LLP

Attorneys for Defendant

19 BY: DAVID I. MILLER
GREGORY W. KEHOE
20 CHARLES BERK

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1 THE COURT: You may be seated.

2 We are here in the matter of United States v.
3 Chastain, 22 Cr. 305.

4 Counsel, please state your names for the record.

5 MR. ROOS: Good afternoon, your Honor. Nick Roos and
6 Thomas Burnett for the United States.

7 MR. MILLER: Good afternoon, your Honor. For the
8 defendant, David Miller, Greg Kehoe, Charlie Berk, from
9 Greenberg Traurig, your Honor.

10 THE COURT: Good afternoon to all of you. Welcome.

11 Mr. Chastain, let me start by introducing myself. My
12 name is Jesse Furman. I'm a United States district judge here
13 in the Southern District of New York and have been assigned
14 your case, which means that if there were a trial in this
15 matter, I would be the judge who would preside over it, and in
16 the event that you were convicted of any offense, I would be
17 the judge who would impose sentence.

18 The purpose of today's proceeding, as I understand it,
19 is to set a schedule for the case going forward. Before I do
20 that, let me just mention, I think counsel are probably aware
21 of this, but Mr. Miller and I were colleagues together at the
22 U.S. Attorney's Office increasingly long ago, but I just wanted
23 to make that disclosure.

24 I don't know if you were sitting through the end of
25 trial today, but it might have been of interest to you.

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1 In any event, let's proceed.

2 Mr. Roos, can you tell me -- I've read the indictment,
3 but anything I ought to know by way of background here? And am
4 I correct that Mr. Chastain was arraigned before a magistrate
5 judge? Is that correct?

6 MR. ROOS: That's right, your Honor. He was arrested,
7 arraigned and presented, and bail was set on June 1, 2022. The
8 bail terms are on the docket, but I'm happy to summarize them
9 if your Honor's interested.

10 THE COURT: I'm happy to look at them on the docket.

11 MR. ROOS: OK. That's what I figured.

12 The indictment is a speaking indictment. I'm happy to
13 give your Honor the factual, although I think the indictment
14 sets it forth. I think today, you know, probably the items
15 that are most immediate are discovery and potential motions,
16 and so I'm happy to speak to either of them whenever your Honor
17 wants to.

18 THE COURT: All right. And I guess just one question
19 I had, I think when most people think of the term "insider
20 trading," they think of securities fraud, but just to be clear,
21 this charge is not a securities fraud charge; it's a
22 conventional wire fraud charge. That is to say, the
23 government's theory is not to say that the items here were
24 securities. Is that correct?

25 MR. ROOS: That's right. We're not alleging

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1 securities fraud.

2 The government's theory, and I'm sure this will come
3 out either in motion practice or in jury instructions at some
4 point, but it's premised on the Supreme Court's decision in
5 *Carpenter*, which, I think, describes insider trading conduct as
6 a wire fraud.

7 THE COURT: All right. Very good.

8 With that, why don't you tell me about the status and
9 nature of discovery.

10 MR. ROOS: Yes, your Honor.

11 So, discovery in this case will consist of two search
12 warrants -- a premises search warrant that yielded electronic
13 devices as well as a location or cell site warrant. And so the
14 discovery will be those warrants and their applications as well
15 as what was yielded from them -- the three electronic devices
16 and the location information; some other materials that were
17 collected both by 2703(d) application and order; and then also,
18 gathered from third parties, most notably, is about 3,000 pages
19 worth of documents from the defendant's former employer, which
20 obviously is alleged in the indictment. There's also a number
21 of public source materials.

22 Our time line, I'd say we'll complete production of
23 discovery probably within the next two weeks.

24 THE COURT: And just to clarify, you mentioned that
25 three devices had been seized, but have they also been

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1 searched? Was that pursuant to --

2 MR. ROOS: Right. Thank you, your Honor.

3 So, all three devices are the defendant's devices.
4 They are, I believe, a computer, an iPad and a cell phone. We
5 will be producing as part of a first sort of -- probably going
6 to make two productions over the next two weeks. The first is
7 going to contain the full devices so that the defendant has the
8 full images, and the second production will be the government's
9 responsive set from the, sort of the portion of the devices
10 that was deemed to be not privileged. So it's our take,
11 basically.

12 THE COURT: And are there wall assistants or wall
13 agents who are conducting that review?

14 MR. ROOS: This particular case, there was no sort of,
15 we basically used search terms to segregate everything that was
16 potentially privileged and put that to the side. We weren't
17 interested in the potentially privileged information. So there
18 was never, like, an analysis of is this privileged or is this
19 not. We just didn't -- we didn't tread there, and instead, on
20 the presumptively nonprivileged materials, did the
21 responsiveness review.

22 THE COURT: OK. And I think the question that I'd
23 originally posed was whether the search of those three devices,
24 was that pursuant to the original search warrant, or was there
25 a new warrant obtained for that?

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1 MR. ROOS: It was all pursuant to the original search
2 warrant.

3 THE COURT: OK. And did the defendant make any
4 postarrest statements?

5 MR. ROOS: No. The defendant at the time of arrest
6 was represented, so we didn't interview him.

7 THE COURT: All right. I will direct that you produce
8 discovery within two weeks, as you have indicated you will, and
9 to the extent that there are ongoing searches or the like,
10 where you come into possession of additional things thereafter,
11 you should promptly produce them, recognizing that discovery is
12 a continuing obligation.

13 I will take the opportunity to comply with Rule 5(f)
14 of the Federal Rules of Criminal Procedure to remind the
15 government of its obligations under *Brady v. Maryland* and its
16 progeny to disclose to the defense all information, whether
17 admissible or not, that is favorable to the defendant, material
18 either to guilt or to punishment, and known to the prosecution.

19 The prosecution must make good faith efforts to
20 disclose such information to the defense as soon as reasonably
21 possible. Failure to do so may result in any number of
22 consequences, including a continuance, sanctions, dismissal, or
23 vacatur of conviction. And in accordance with the rule, I will
24 enter a written order more fully spelling out the government's
25 obligations and the consequences of failing to adhere to them.

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1 I would direct the government to read that order and make sure
2 that it understands and complies with its obligations.

3 Can you confirm that you do understand your
4 obligations?

5 MR. ROOS: We understand our obligations, and we'll
6 review the order when your Honor signs it.

7 THE COURT: All right.

8 And to the extent that there is anyone who would
9 qualify as a crime victim, within the meaning of the Crime
10 Victim Rights Act here, or at least an identifiable victim,
11 have they been notified of these proceedings?

12 MR. ROOS: Your Honor, the indictment alleges the
13 defendant defrauded his former employer, and the government's
14 in contact with that employer.

15 THE COURT: All right. Very good.

16 Mr. Miller, I guess one is any issues to discuss with
17 respect to the search of the electronic devices, or are we good
18 on that front until you see what is produced?

19 MR. MILLER: Your Honor, I need to see what's being
20 produced.

21 We did send -- just so your Honor's aware, we sent a
22 Rule 16 and *Brady* demand to the government this morning. And I
23 don't know if your Honor wanted me to quickly address the way
24 Mr. Roos described the indictment, but it is going to have
25 relevance with respect to motions that we intend to make in the

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1 case.

2 THE COURT: Sure. Go ahead.

3 MR. MILLER: So, your Honor, Mr. Roos had described
4 this as an insider trading case but then sort of said, Well,
5 it's really a wire fraud case.

6 As your Honor probably saw with respect to this
7 indictment, which I think the government characterized as a
8 speaking indictment but, I think, was about eight or nine pages
9 in length, including the statutory language, so I would hardly
10 classify it as speaking, and we intend to file a bill of
11 particulars, if necessary, the prosecution in this case has
12 essentially alleged insider trading, which is all over the wire
13 fraud indictment, even though there's no allegation sufficient
14 for insider trading.

15 As your Honor noted, the nonfungible tokens or digital
16 assets at issue are neither securities nor commodities, and
17 noticeably, they did not charge securities or commodities
18 fraud. Furthermore, unlike what Mr. Roos just described, there
19 was no defrauding of OpenSea, as we'll describe in motions, and
20 so if there was no defrauding of OpenSea and maybe some
21 allegations, even though we would contest those, of any kind of
22 defrauding of counterparties, to whom no duty is owed, then
23 there's no wire fraud charge.

24 And lastly, to the extent that Mr. Chastain used any
25 information to decide who Mr. Chastain was going to feature on

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1 OpenSea's home page, that is not the confidential information
2 of OpenSea. That is information from Mr. Chastain in his head.
3 So there's going to be in this case, your Honor -- and
4 obviously, there's other motions that we intend to file,
5 including with respect to the money-laundering count, which is
6 based on purported financial transactions, even though there
7 were no financial transactions.

8 So there are a number of legal issues in this case,
9 your Honor, including novel ones, that we intend to file.
10 Noticeably, the U.S. Attorney's Office has made much of this
11 indictment. We, of course, noted with interest that what's not
12 present in this indictment is the amount in controversy, which
13 is \$65,000. So interestingly, the big splash that the Southern
14 District has made with this indictment relates to products that
15 are neither securities nor commodities; that there's no wire
16 fraud; there's certainly no insider trading as specified all
17 over the indictment; and this involved \$65,000.

18 So we have several motions that we intend to file just
19 on a legal basis, without having received any of the discovery,
20 and obviously, we intend to review that. And to the extent
21 that there are suppression motions, we will file those as well.

22 Thank you, your Honor.

23 THE COURT: All right. To the extent that you can
24 predict what those motions would be, aside from a motion to
25 dismiss, which you sort of previewed, and the possibility of a

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1 motion to suppress, anything else that you would mention, and a
2 motion for bill of particulars?

3 MR. MILLER: Yeah. As my colleague also appropriately
4 noted, we intend to, down the road, make Rule 17(c) motions and
5 serve subpoenas as necessary.

6 THE COURT: All right. Let me mention a couple
7 things.

8 First, I would just remind defense counsel of local
9 Rule 16.1. With respect to any motion for a bill of
10 particulars, it sets forth certain requirements that must be
11 met -- in particular, that you have to confer in good faith
12 with counsel for the government before making any such motion.
13 And that's in the hopes that that meeting and conferring would
14 obviate the need for such motion practice. So make sure you
15 adhere to that.

16 Second, I would just urge you to distinguish -- there
17 may well be valid arguments as a matter of law to be made with
18 respect to a motion to dismiss, but to distinguish what are
19 matters of law from matters of fact. It may well be that you
20 have some very good arguments to make to a jury in this case,
21 but if it's a matter of factual issue for a jury to decide,
22 that's what a trial is for and not what a motion is for. So I
23 would ask you to take that admonition under advisement and only
24 file a motion if you think I can grant it. Don't file a motion
25 if it's clearly a factual issue for the jury to decide and not

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1 for me.

2 I'm intimating no view. I don't know enough about the
3 facts here, let alone the law, to say that that's what it is,
4 but just hearing what you were saying raises that red flag, I
5 guess.

6 MR. MILLER: Understood, your Honor.

7 THE COURT: All right.

8 My question for you, I don't think you have had the
9 pleasure of appearing before me before -- maybe you have, but
10 in any event, my practice is to set a deadline for the filing
11 of motions. I wouldn't think 17(c) motions are in that
12 category just yet, although obviously if you think there's a
13 motion to be brought on that score, you can bring it. My
14 question for you is how much time you would need to review the
15 discovery before deciding and then preparing any motions that
16 you would wish to bring.

17 MR. MILLER: Your Honor, given that there may be a
18 substantial amount of electronic discovery that's involved, and
19 obviously we would be bringing motions to dismiss, and to the
20 extent that motions to suppress are necessary -- and I imagine
21 it probably would be -- we would request, if possible, motions
22 be set for September, since we're going to be getting the
23 discovery over the next couple of weeks, and obviously we're
24 into the summer.

25 THE COURT: All right. Can I float the following

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1 thought, just thinking out loud. I don't generally love
2 piecemeal motion practice, but does it make sense to stage it
3 here, and to the extent that you don't need to see the
4 discovery to bring a motion to dismiss, or at least I wouldn't
5 think, because again, that has to focus on issues of law and
6 not issues of fact, does it make sense to set an earlier
7 deadline for motion to dismiss and I can begin working on that
8 while you're reviewing discovery and preparing any
9 discovery-related motions that you might have? Does that make
10 sense?

11 MR. MILLER: We can certainly do that, your Honor.

12 Given the precedential nature of some of these motions
13 I would think we'll be making -- and I understand your Honor's
14 admonitions with respect to questions of fact, and we have no
15 intention to put motions that are factual-based before your
16 Honor, but -- at least with respect to motions to dismiss.
17 Given the fact, though, that there are a lot of novel issues
18 that are involved here, could we nevertheless stage a motion
19 the dismiss perhaps in August to give us enough time? So to
20 the extent that it's a month and a half or two months to file
21 full motions to dismiss.

22 THE COURT: All right.

23 Mr. Roos, anything you want to say on that front? Do
24 you agree with staging it in that way? It's not a large gap in
25 time, but it does at least mean that I can get started on a

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1 motion to dismiss before we're addressing the motions to
2 suppress-type issues.

3 MR. ROOS: I don't think it really matters to us.
4 We'll do whatever your Honor wants.

5 THE COURT: All right. I think I will do that. And
6 set a deadline for the filing of any motion to dismiss, give
7 the defendant until August 19.

8 Does that work, Mr. Miller?

9 MR. MILLER: That's good, your Honor.

10 THE COURT: And the government two weeks to respond.
11 Does that work?

12 MR. ROOS: I'm sure it's fine. We're just trying to
13 figure out what date that is.

14 THE COURT: September 2, so right before Labor Day
15 weekend.

16 Yes?

17 MR. ROOS: It's fine. We'll figure it out.

18 THE COURT: All right. In light of the intervening
19 Labor Day weekend, I'll give the defendant until September 12
20 to file any reply; that is, first on the motion to dismiss, and
21 then to ensure that you have a little bit of time after the
22 reply before filing any motions to suppress, I'll set a
23 deadline for any such motions or evidence-based motions, really
24 any other motion aside from the motion to dismiss, I'll give
25 the defense until September 30; the government until October 14

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1 to file any opposition, and then October 21 will be the reply.

2 I'm going to have you back -- I think in this case I
3 will actually deviate from my usual practice and have you back
4 after all of those motions are fully briefed, so sometime in
5 October, with the caveat that while I don't have oral argument
6 very often, this may be a case that lends itself to oral
7 argument, at least on the motions to dismiss. I'll look at the
8 briefs when they come in. If I decide it would be helpful,
9 then I may order it. Bottom line is don't worry about it until
10 you see an order, but just fair warning that it may be coming.

11 I will have you back, let's say, on Thursday, October
12 27 at 3:30 in the afternoon. Unless and until I say otherwise,
13 assume that's in my regular courtroom, 1105 in 40 Foley, and
14 not in this courtroom. And at that time, you certainly should
15 be prepared to discuss any motions that have been filed and in
16 particular whether we need to have a hearing to the extent that
17 I haven't already addressed that based on the briefs. If I
18 want to have oral argument before that, I will alert you, but
19 the most important point is that at that conference, you should
20 anticipate that if there is going to be a trial, that I will be
21 setting a trial date, and you should understand that, barring
22 something like a pandemic, when I set a trial date, it is a
23 firm date.

24 So you should confer with one another with respect to
25 when you would want to have trial in this matter. I will seek

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1 to honor your request, within reason, but with the
2 understanding that when I set a date, it is a firm date.

3 Any other items other than speedy trial?

4 Mr. Roos.

5 MR. ROOS: Just going to be speedy trial.

6 THE COURT: All right. Is there an application on
7 that score?

8 MR. ROOS: The government moves to exclude time, I
9 guess, to August 19, which is the date motions are due,
10 although I'm also happy to make the application to the next
11 conference, whatever your Honor's preference is.

12 THE COURT: I think the next conference probably makes
13 more sense.

14 MR. ROOS: The government moves to exclude time until
15 October 27, 2022, so the government can produce discovery, the
16 defense can review discovery, and the defense can make any
17 motions.

18 THE COURT: Any objection?

19 MR. MILLER: None, your Honor.

20 THE COURT: Anything else from your end, Mr. Miller?

21 MR. MILLER: No, your Honor. Thank you.

22 THE COURT: All right.

23 I will exclude time under the Speedy Trial Act between
24 today and October 27, 2022. I find that the ends of justice
25 served by excluding that time outweigh the interests of the

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1 defendant and the public in a speedy trial, to allow the
2 government to produce discovery but, more importantly, to allow
3 the defendant to prepare a motion to dismiss and to review the
4 discovery and prepare and file any other motions that he wishes
5 to bring.

6 With that, I wish you all a pleasant afternoon and
7 evening, and I will see you when I see you.

8 We're adjourned. Thank you.

9 (Adjourned)